

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

TIMOTHY EUGENE McCRAY, ]  
] PLAINTIFF ] CIVIL ACTION  
] ] FILE NO. 1.06 CV 775 DRB  
-VS- ]  
] SOUTHERN GENERAL INS CO. ]  
] DEFENDANT ]

CONSENT MOTION AND AGREEMENT FOR  
DISMISSAL OF UNINSURED MOTORIST INSURANCE  
CARRIER WITHOUT PREJUDICE

COME NOW TIMOTHY EUGENE MCCRAY, plaintiff in the above-captioned action, and Southern General Insurance Company, an uninsured motorist insurance carrier under O.C.G.A. 33-7-11, and, enter into this consent motion and agreement and move the Court to dismiss Southern General Insurance Company from this action without prejudice for the consideration hereinafter set forth:

1.

Southern General Insurance Company has been properly served as plaintiff's uninsured or underinsured motorist insurance carrier in accordance with O.C.G.A. 33-7-11 (d) and Georgia law.

2.

Southern General Insurance Company has requested that it be dismissed from this action without prejudice; and under the authority of Yarbrough v. Dickinson, 183 Ga. App. 489, 359 S.E. 2d 235 (1987), plaintiff hereby agrees and consents to a dismissal of Southern General Insurance Company from this action without prejudice upon the following conditions:

(a) The applicable statute of limitation shall be tolled, and in the event the named defendant subsequently becomes uninsured or underinsured, plaintiff without leave of Court, may re-serve Southern General Insurance Company by a separate amendment to plaintiff's complaint, and the agent for service for Southern General

Insurance Company will timely accept and acknowledge due and legal service of plaintiff's complaint, as amended.

(b) In the event that Southern General Insurance Company, as plaintiff's uninsured or underinsured motorist insurance carrier, is later re-served with such amendment to plaintiff's complaint in the manner as specified hereinabove, Southern General Insurance Company will be afforded no less than ninety (90) days before trial is requested or scheduled in which to complete discovery, conduct its investigation, and prepare for trial.

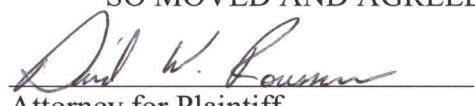
(c) In the event that Southern General Insurance Company, as plaintiff's uninsured or underinsured motorist insurance carrier, is later re-served with such amendment to plaintiff's complaint in the manner as specified hereinabove, Southern General Insurance Company shall be afforded the usual response period under the Georgia Civil Practice Act in which to file its answer, defensive pleadings, and defensive motions, including any defenses or motions relative to uninsured motorist or underinsured motorist insurance coverage (other than defenses pertaining to the applicable statute of limitation and notice under O.C.G.A. 33-7-11, which are waived as hereinbelow set forth).

(d) Southern General Insurance Company hereby agrees to waive and does hereby waive any affirmative defense of the applicable statute of limitation and agrees to waive and does hereby waive the defense of statutory notice under O.C.G.A. 33-7-11 (d), which may otherwise be available to it in the event it is later re-served as plaintiff's uninsured or underinsured motorist insurance carrier in this action in the manner specified hereinabove.

3.

The parties hereto hereby request that the Court enter an Order in this action, granting the within and foregoing consent motion upon the terms and conditions expressed herein.

SO MOVED AND AGREED, THIS 29<sup>th</sup> DAY OF November, 2006

  
\_\_\_\_\_  
Attorney for Plaintiff

ASB - 0469-5980  
\_\_\_\_\_  
State Bar No.

211 W. Adams St. Dothan, AL 36303

Address

(334) 569-9000

Telephone number

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the above and foregoing Consent Motion and Agreement for Dismissal of Uninsured Motorist Insurance Carrier Without Prejudice upon the following counsel electronically this the 30th day of November, 2006.

Christoffer Peter Bolvig, III [peter.bolvig@hallconerly.com](mailto:peter.bolvig@hallconerly.com), [bolviglaw@aol.com](mailto:bolviglaw@aol.com)

David Jerome Harrison [davidjharrison@centurytel.net](mailto:davidjharrison@centurytel.net)

William Anderson Mudd [billmudd@mhsolaw.com](mailto:billmudd@mhsolaw.com), [whitneybruce@mhsolaw.com](mailto:whitneybruce@mhsolaw.com)

David W. Rousseau [rousseaulaw@graceba.net](mailto:rousseaulaw@graceba.net), [drous19266@aol.com](mailto:drous19266@aol.com)

Tommy Ray Scarborough [trslc@graceba.net](mailto:trslc@graceba.net), [sbrooks@graceba.net](mailto:sbrooks@graceba.net)

Notice was delivered via U.S. Mail to the following:

Johnnie Mae Graham  
Randolph H. Phillips  
Phillips & Graham  
P.O. Box 2303  
Albany, GA 31702-2303

Southern General Insurance  
c/o Jill Jinks  
1904 Leland Drive  
Marietta, GA 30067



\_\_\_\_\_  
David W. Rousseau